CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT

NOTICE OF DECISION

APPLICANT: Delaware Holding, LLC/Whittaker Brothers
PO Box 531
Delaware City, DE 19706

NCC TAX PARCEL NOS. 22-007.00-062
PUBLIC HEARING DATE: Nov. 24, 2009
DATE OF DECISION: Dec. 4, 2009

REQUESTED: Applicant requested dimensional variances: (i) from the 15 foot front yard set back requirement of the Zoning Code, §46-31 to permit a zero foot set back on each of three proposed townhouse lots; (ii) waiver of off street parking requirements of Section 46-96; (iii) from the height limitation of 35 feet set forth in Zoning Code §46-31 to permit a building up to 46 ft high; (iv) from lot area requirements (5,000 sq. ft.) to permit two 3,100 sq. ft. lots and one 2,000 sq. ft. lot; (v) from lot frontage requirements (50 ft.) to permit two lots with 29 ft. frontage and one lot with 20 ft. frontage, all at 59 Washington Street, NCC Tax Parcel No. 22-007.00-062.

The Board of Adjustment may grant a variance from the area or dimensional requirements of the City of Delaware City Zoning Code where it finds the applicant or property owner is experiencing exceptional practical difficulty, rather than routine difficulty, in complying with the specific standards of the Zoning Code applicable to the subject property. The Board may condition any such grant as the Board deems necessary to protect the health, safety and welfare of the neighborhood and the City.

The subject property is located in the C-1 zone and is in the historic district. The lot is approximately .2 acres in size, 79 feet wide and 108 feet deep. The property was the subject of a variance and special exception application in 2006 which resulted in the approval of a condominium project comprised of 7 residential condominium units and 2 commercial units on the first floor. The applicant has not implemented the condominium plan within 12 months of the grant date and so all variances and the special exception for condominiums previously granted have expired and are now null and void per Zoning Code §46-62.

The applicant's current plan is to subdivide and develop the site as three row house lots to permit either residential use or a mixed commercial us (on one or more of the first floors) and residential use (on one or more of the second floors). The Planning Commission has recommended

approval of the plan and the requested variances. The Historic Preservation Commission retains approval rights over the appearance of exterior facades which have not been finalized by the applicant. Subdivision approval of the site is contingent upon the grant of the variances requested.

The applicant testified that the site would not have adequate space for off street parking. Instead, the applicant proposes to install sidewalks, curbing, shoulder, pavement and striping on the Washington Street right of way so as to provide for 9 on street parking spaces to service the project. Parking improvements would include, sidewalks, curbing, paving, landscaping, at least one handicapped space and shoulder installation the details of which would be subject to the approval of the City Manager. The subject property is also adjacent to a public off street parking lot that would be available to owners, occupants and guests.

As proposed, the applicant stated that the row homes would have a zero front yard set back while 15 feet is normally required in the C-1 zone. The applicant, however, testified that zero front setbacks are common in the historic district and that zero front setbacks were approved by the Planning Commission. The applicant testified that the 2 exterior row homes would have wider lots than the center row home (29 ft. wide vs. 20 ft. wide) and thus would also have larger lot areas (3,100 sq. ft. for the exterior row homes vs. 2,000 sq. ft.).

The proposed structure is to be 3 stories (up to 46 ft high) to take full advantage of river view and enhance value and marketability. This would require a variance from the Code's height limitation of 35 ft. the applicant testified, however, that such a height would not be inconsistent with at least one close-by property: the building occupied by Crabby Dicks restaurant.

As in its 2006 application to the Board, the applicant indicated that site configuration, the need for off street parking and the desire to make reasonable improvements lay the foundation for applicant's claim of exceptional practical difficulty in support of the variance requests.

The City Manager testified that appropriate public posting and certified mail notices to surrounding property owners as required by Code had been completed. No written letters of support or objection were received. Two members of the public appeared at the Board of Adjustment hearing to ask questions but not necessarily to support or object to the application.

The City Manager stated that the City recommends approval of the variances with the condition that the applicant construct certain street scape improvements including up to a 16 foot wide sidewalk, landscaping, curbing, nine angle parking spaces (one handicapped space) and pavement widening within the Washington Street right of way for the length of the property frontage all as to be directed by the City Manager and all in accordance with City and DelDOT specifications.

The applicant verbally agreed to all conditions proposed. No opposition testimony was presented to the Board.

Discussion then ensued concerning the applicant's right to erect row houses used strictly for residential purposes in a C-1 zone. It was pointed out that the C-1 zone permits all uses authorized in the R-1 zone (one-family residential). Specifically, §46-16 permits "one one-family dwelling per lot, framed on site..." in the R-1 zone. Section 46-3 defines "Dwelling, One-Family" as "a ***detached*** dwelling, including a manufactured home, on a single-family lot, designed for and occupied by a single family" (emphasis added). The three structures proposed are not detached but rather fall under the definition of 'Dwelling, Row or Group" in §46-3: "A building consisting of a series of three or more non-communicating one-family sections having a common wall between each two (2) adjacent sections." Row dwellings are not permitted in either R-1 or C-1 zones but rather are permitted in R-2 zones with the grant of a special exception. *See*, §46-17(d). The applicant was advised that even if the variances requested in this application were granted, a further use variance or rezoning of the subject property would be required to secure final subdivision approval and to implement the row house development.

The Board votes to grant the requested variances with the following conditions:

1. The applicant will construct certain street scape improvements including up to a 16 foot wide sidewalk, landscaping, curbing, nine angle parking spaces (one handicapped space) and pavement widening within the Washington Street right of way for the length of the property frontage as required and approved by the City Manager in his discretion and otherwise all in accordance with City and DelDOT specifications.

2. Prior to commencement of any construction, the applicant will post a bond, letter of credit or other suitable financial guarantee in form and amount acceptable to the City for the value of street scape improvements including the curbing, parking space, road widening and sidewalk improvements specified above. The City, in its sole discretion, reserves the right to perform such construction work itself and require the applicant to reimburse the City for the cost of such work up to the amount of the bond, letter of credit or other financial guaranty.

Otherwise, the Board determined that the same conditions supporting the grant of the now-expired variances in 2006 continue to exist, to wit: (i) the requested dimensional changes are minimal in light of the existing lot configuration and the improvements thereon; (ii) they are

generally compatible with surrounding property uses in the historic district; (iii) the lot configuration creates a situation of exceptional practical difficulty in that the owner cannot make normal improvements to the property in compliance with the Code set back requirements without unnecessarily impairing other reasonable uses of the property for parking or other improvements; and (iv) the harm to the applicant if the variance were denied would be greater than the probable effect on neighboring properties if the variance is granted. The granting of the variance will further not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the Zoning Code.

Vote: 3–0 (Grant: Martin, Stewart, and Losco)

BOARD OF ADJUSTMENT OF
THE CITY OF DELAWARE CITY

John W. Martin

John W. Martin, Chairperson

NOTE: This variance is neither a building permit nor a Certificate of Occupancy. Appropriate permits must be obtained from the applicable governmental agencies prior to construction or establishment of any use on the property. This decision should be kept in a safe place with the property deed. This decision may be appealed to the Superior Court by any person aggrieved by it within 30 days of its filing in the Office of the Board of Adjustment.